

April 8, 2024

VIA ECF

The Honorable Lorna G. Schofield
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Harrington Global Opportunity Fund, Limited v. BofA Securities, Inc., et al.* No. 1:21-cv-00761 (LGS) (S.D.N.Y.)

Dear Judge Schofield:

Pursuant to the Court’s February 1, 2024 Fourth Amended Civil Case Management Plan and Scheduling Order [ECF No. 188] and Rule III.D.3 of the Court’s Individual Rules, the parties respectfully submit this joint status letter.

(a) What discovery has taken place

The parties began engaging in discovery in February 2022 after the Court denied Defendants’ motion to dismiss Plaintiff’s Amended Complaint (the “AC”). The parties propounded initial requests for production in April 2022; served responses and objections in June 2022; and—in multiple productions in September through November 2022—produced ESI and trading data. On September 28, 2023, the Court denied Defendants’ motion to dismiss Plaintiff’s Second Amended Complaint (the “SAC”), which alleges unlawful spoofing by Defendants and/or their customers. Defendants subsequently agreed to produce documents and data reflecting customer trading.

To date, the total volume of each party’s productions are as follows: Plaintiff has produced 8,161 documents; Defendants TD Securities, Inc. and TD Securities (USA) LLC (together, “TD”) have produced 797 documents; Defendants BofA Securities, Inc. and Merrill Lynch Canada Inc. (together, “Merrill”) have produced 665 documents; and Defendant CIBC World Markets, Inc. (“CIBC”) has produced 374 documents.

(b) The procedural history of the case to date

Plaintiff filed its initial complaint [ECF No. 102] on January 27, 2021. Plaintiff amended as of right and filed the AC [ECF No. 56] on April 22, 2021. Defendants (along with other defendants that have since been dismissed) filed a motion to dismiss the AC on June 7, 2021. [ECF No. 72.] On February 9, 2022, this Court issued an Opinion and Order granting in part and denying in part the motion to dismiss. [ECF No. 88.] As noted above, the parties engaged in discovery starting in February 2022. On November 16, 2022, Plaintiff sought leave to file the SAC, adding allegations related to customer trading. [ECF No. 125.] On December 12, 2022, with Defendants’ consent, this Court granted Plaintiff leave to file the SAC. [ECF No. 132.] On

December 19, 2022, Plaintiff filed the SAC. On January 27, 2023, Defendants filed a motion to dismiss the SAC. [ECF No. 135.]

On September 28, 2023, the Court issued an Opinion and Order denying Defendants' Motion to Dismiss the SAC. [ECF No. 147.] On January 26, 2024, Plaintiff moved for an extension of the then-existing February 16, 2024 fact discovery deadline and a commensurate extension of the expert discovery deadline. [ECF No. 186.] On February 1, 2024, the Court granted Plaintiff's request and issued a scheduling order under which all fact discovery, including discovery related to customer trading, is to be completed no later than May 10, 2024. [ECF No. 188.] The Court also ordered that, "by March 1, 2024, Defendants shall file a letter certifying that they have substantially completed their document productions, including compliance with the January 10, 2024, Order." [ECF No. 189.] Each of the Defendants filed that letter on March 1, 2024. [ECF Nos. 195, 197, and 198.] On March 18, 2024, the Court granted, in part, Defendant CIBC World Markets, Inc.'s motion for a protective order, but directed that "CIBC shall provide deanonymized data for specific trades Harrington identifies that occurred in the same millisecond and that may be relevant to Plaintiff's allegations of coordination." [ECF No. 207.] On March 21, 2024, the Court granted Plaintiff's application to compel CIBC to produce data with anonymized identifiers for the entire Relevant Period pursuant to the Court's March 18, 2024 Order [ECF No. 207], and further ordered additional steps all parties must take before raising any additional discovery disputes to the Court. [ECF No. 210.]

(c) The parties' plan to ensure they meet the Court ordered discovery deadlines

CIBC is in the process of preparing anonymized trading data for production in accordance with the Court's March 18 and March 21, 2024 Orders. Once that data is produced, Plaintiff will work expeditiously to perform a millisecond matching analysis so that CIBC can provide deanonymized data in accordance with those Orders. In addition, the parties continue to meet and confer about certain disputes concerning their document productions and interrogatory responses. The parties are mindful of the Court's March 18, 2024 Order requiring that before any future discovery motions, the parties must (i) first, engage in "at least an hour of good-faith, in-person or video conference negotiations," and (ii) include a statement in any letter motion "explaining what concessions were offered in negotiations and why negotiations were not fruitful." *Id.* Accordingly, the parties are engaging in comprehensive negotiations in a good-faith effort to resolve open discovery issues consensually and avoid bringing disputes to the Court if at all possible.

On April 4, 2024, the parties met and conferred concerning fact and expert discovery deadlines. The parties expect to continue to meet and confer over the next several days and to make an application or applications to the Court regarding the schedule promptly thereafter.

Respectfully submitted,

/s/ Abby F. Rudzin
Abby F. Rudzin
William J. Martin

/s/ Alan M. Pollack
Alan M. Pollack
Leron Thumim

O'MELVENY & MEYERS LLP
Seven Times Square
New York, NY 10026
(212) 326-2000
arudzin@omm.com
wmartin@omm.com

*Counsel for Defendants BofA Securities, Inc.
and Merrill Lynch Canada, Inc.*

/s/ Jamie S. Dycus

Jamie S. Dycus
David Lesser
Jenny Pelaez
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036
(212) 556-2100
jdycus@kslaw.com
dlesser@kslaw.com
jpelaez@kslaw.com

*Counsel for Defendants TD Securities, Inc.,
and TD Securities (USA) LLC*

/s/ Sandra D. Hauser

Sandra D. Hauser
DENTONS US LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 768-6802
sandra.hauser@dentons.com

Stephen J. Senderowitz
Timothy J. Storino
233 South Wacker Drive, Suite 5900
Chicago, IL 60606
(312) 876-8141
stephen.senderowitz@dentons.com
timothy.storino@dentons.com

*Counsel for Defendant CIBC World Markets
Inc. (Canada)*

Felicia S. Ennis
Thomas Filardo
Matthew A. Marcucci
WARSHAW BURSTEIN, LLP
575 Lexington Avenue, 7th Floor
New York, New York 10022
(212) 984-7700

apollack@wbnny.com
lthumim@wbnny.com
fennis@wbnny.com
tfilardo@wbnny.com
mmarcucci@wbnny.com

/s/ Richard J. Holwell

Richard J. Holwell
Gregory Dubinsky
Andrew C. Indorf
Jonathon R. La Chapelle
Aditi Shah
HOLWELL SHUSTER & GOLDBERG LLP
425 Lexington Avenue
New York, NY 10017
(646) 837-5151
rholwell@hsllp.com
gdubinsky@hsllp.com
aindorf@hsllp.com
jlachapelle@hsllp.com
ashah@hsllp.com

/s/ James Wes Christian

James Wes Christian
Ardalan Attar
CHRISTIAN ATTAR LAW GROUP, LLC
1177 West Loop South, Ste. 1700
Houston, TX 77027
(713) 659-7617
jchristian@christianattarlaw.com
aattar@christianattarlaw.com

*Counsel for Plaintiff Harrington Global
Opportunity Fund*